

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CARPENTERS PENSION TRUST FUND  
FOR NORTHERN CALIFORNIA, et al.,

Plaintiffs,

v.

MARCELLINA HERNANDEZ, et al.,

Defendants.

Case No. [20-cv-01778-EMC](#)

**ORDER GRANTING CROSS-  
CLAIMANT HERNANDEZ'S MOTION  
FOR DEFAULT JUDGMENT AGAINST  
CROSS-DEFENDANT MCKEAGUE**

Docket No. 53

Plaintiffs are the Carpenters Pension Trust Fund for Northern California and the Carpenters Annuity Trust Fund for Northern California ("Trust Funds"). They initiated this action by filing an interpleader complaint against Defendants Marcellina Hernandez and Charlotte McKeague. The gist of the suit was that the Trust Funds had in their possession certain benefits belonging to decedent Michael Sanchez Hernandez; that the Trust Funds had no interest in the benefits other than complying with their obligation to pay the benefits to the proper beneficiary; and that Defendants had a dispute as to who is the proper beneficiary – *i.e.*, Ms. Hernandez (his mother) or Ms. McKeague (his girlfriend). In November 2020, the Court granted the Trust Funds' motion for default judgment against Ms. McKeague and ordered that the Trust Funds deposit the checks representing Mr. Hernandez's pension and annuity benefits with the Court. *See* Docket No. 31 (order). After the Trust Funds did so, the Court dismissed the Trust Funds from the case, which left only Ms. Hernandez's cross-claim against Ms. McKeague. *See* Docket No. 41 (order).

Subsequently, Ms. Hernandez served her cross-claim on Ms. McKeague. *See* Docket No. 46 (proof of service). After Ms. McKeague did not respond, the Clerk of the Court entered Ms. McKeague's default. *See* Docket No. 51 (notice). Ms. Hernandez has now moved for a default

judgment against Ms. McKeague. Ms. McKeague did not file an opposition to the motion for default judgment, nor did she make an appearance at the hearing on the motion. Having considered Ms. Hernandez's papers as well as Ms. McKeague's lack of opposition and failure to appear, the Court **GRANTS** the motion for default judgment.

## I. DISCUSSION

### A. Service of Summons and Complaint

As an initial matter, the Court considers the matter of service of the summons and complaint on Ms. McKeague. Ms. Hernandez made four attempts to personally serve Ms. McKeague at an address in Fairfield, California, before being told that Ms. McKeague did not reside there. *See* Durham Decl., Ex. A (nonservice report). Ms. Hernandez then found a new address associated with Ms. McKeague in La Grange, California. *See* Durham Decl. ¶ 3. She made two attempts to serve at the La Grange address without any success. *See* Durham Decl., Ex. B (declaration of diligence). On the third attempt, the summons and complaint were left with "Jane Doe," a competent member of the household at least 18 years of age. The summons and complaint were thereafter mailed to Ms. McKeague at the same address. *See* Docket No. 46 (proof of service).

The Court finds that service of process was proper. Federal Rule of Civil Procedure 4(e) provides that an individual may be served "following state law." Fed. R. Civ. P. 4(e)(1). California law allows for substituted service "[i]f a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served." Cal. Code Civ. Proc. § 415.20(b). Here, Ms. Hernandez has sufficiently shown that the summons and complaint could not with reasonable diligence be personally served on Ms. McKeague. *See Bd. of Trs. of Leland Stanford Junior Univ. v. Ham*, 216 Cal. App. 4th 330, 337 (2013) (stating that, "in order to avail oneself of substituted service under section 415.20, [t]wo or three attempts to personally serve a defendant at a proper place ordinarily qualifies as reasonable diligence") (internal quotation marks omitted). She was thus permitted to rely on substituted service. Ms. Hernandez has also demonstrated that she complied with the requirements of substituted service. *See* Cal. Code Civ. Proc. § 415.20(b) (requiring that documents be left "at the person's dwelling house,

usual place of abode, [etc.] in the presence of a competent member of the household . . . at least 18 years of age” and then mailed “to the person to be served at the place where a copy of the summons and complaint were left”).

Because the summons and complaint were properly served on Ms. McKeague, the Court now turns to the merits of the motion for default judgment.

B. Merits of Motion for Default Judgment

The Clerk of the Court entered Ms. McKeague’s default on March 30, 2021. *See* Docket No. 51 (notice). After entry of default, a court may grant a default judgment on the merits of the case. *See* Fed. R. Civ. P. 55. “The district court’s decision whether to enter a default judgment is a discretionary one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980). A court may consider the following factors in exercising such discretion:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

*Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Because default has already been entered in this case, the Court must construe as true all of “the factual allegations of the [cross-claim], except those relating to the amount of damages.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). The Court may also consider evidence submitted in conjunction with the motion for default judgment. *Cf.* Fed. R. Civ. P. 55 (noting that a “court may conduct hearings . . . when, to enter or effectuate judgment, it needs to [e.g.] establish the truth of any allegation by evidence” or “investigate any other matter”).

The Court finds that the *Eitel* factors weigh in favor of granting default judgment. For example, as to the first factor, if the motion for default judgment were to be denied, then Ms. Hernandez would likely be prejudiced as she could not move forward with this litigation. *See Walters v. Shaw/Guehnemann Corp.*, No. 03-cv-04058, 2004 U.S. Dist. LEXIS 11992, at \*7 (N.D. Cal. Apr. 15, 2004) (“To deny plaintiff’s motion [for default judgment] would leave them without a remedy. Prejudice is also likely in light of the merits of their claims.”); *Pepsico, Inc. v. Cal. Sec.*

1 *Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (“If Plaintiffs’ motion for default judgment is  
2 not granted, Plaintiffs will likely be without other recourse for recovery.”).

3 As for the fourth *Eitel* factor, Ms. Hernandez does not seek any money damages from Ms.  
4 McKeague directly; rather, she simply asks that she be awarded Mr. Hernandez’s pension and  
5 annuity benefits as she, and not Ms. McKeague, is the proper beneficiary. *See PepsiCo*, 238  
6 F.Supp.2d at 1176 (stating that “the court must consider the amount of money at stake in relation  
7 to the seriousness of Defendant’s conduct”).

8 As to the fifth, sixth, and seventh *Eitel* factors, because Ms. McKeague has not filed an  
9 answer to the cross-claim, there is nothing to suggest that there is a possibility of a dispute  
10 concerning material facts. Nor is there any indication that Ms. McKeague’s default was due to  
11 excusable neglect. And while public policy favors decisions on the merits, *see Eitel*, 782 F.2d at  
12 1472, Ms. McKeague’s choice not to defend this action renders a decision on the merits  
13 “impractical, if not impossible.” *PepsiCo*, 238 F. Supp. 2d at 1177.

14 Finally, on the second and third *Eitel* factors – *i.e.*, the merits of Ms. Hernandez’s  
15 substantive claim and the sufficiency of that claim – the Court takes the well-pled allegations in  
16 the cross-claim as true. With that predicate, Ms. Hernandez has sufficiently shown that she, and  
17 not Ms. McKeague, is the proper beneficiary. Ms. Hernandez has alleged that: (1) Mr. Hernandez  
18 named her as the beneficiary in May 2005; (2) she remained the beneficiary through the date of his  
19 death in October 2018; and (3) Ms. McKeague submitted a fraudulent change-of-beneficiary form  
20 to the Trust Funds without Mr. Hernandez’s knowledge or consent – specifically, “while Mr.  
21 Hernandez was unconscious, incapacitated[,] and a mere few hours from death.” Cross-Claim ¶  
22 23.

23 Accordingly, the Court grants Ms. Hernandez’s motion for default judgment.

24 C. Relief

25 The only issue remaining is what relief should be issued. In her supplemental brief, Ms.  
26 Hernandez states that she no longer seeks attorney’s fees and that the only relief she seeks is (1) to  
27 be declared the proper beneficiary and (2) to be awarded the benefits at issue. The Court finds this  
28 relief appropriate.

**II. CONCLUSION**

For the foregoing reasons, the Court grants the Ms. Hernandez's motion for default judgment and orders as follows:

- a. Ms. Hernandez is the proper beneficiary of Mr. Hernandez's benefits.
- b. Ms. Hernandez is awarded those benefits (both pension and annuity).
- c. The Clerk of the Court is ordered to release to Ms. Hernandez the funds deposited with the Court by the Trust Funds (representing Mr. Hernandez's benefits). *See* Docket No. 40 (indicating deposit of \$76,882.32 and \$59,625.01). Counsel for Ms. Hernandez shall contact the Clerk of the Court to obtain the funds on behalf of Ms. Hernandez.

This order disposes of Docket No. 53.

Ms. Hernandez is directed to serve this order on Ms. McKeague and to file a proof of service certifying that service has been made.

The Clerk of the Court is ordered to enter a final judgment in accordance with the above and close the file in this case.

**IT IS SO ORDERED.**

Dated: June 10, 2021



EDWARD M. CHEN  
United States District Judge